

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Karen Testerman, et al *

*

Plaintiffs, *

v. *

Civil No. 1:23-cv-00499-JL-AJ

*

Secretary of State David M. Scanlan, et al *

*

Defendants. *

*

**SECRETARY OF STATE’S PROPOSED FINDINGS OF FACT AND RULINGS OF
LAW FOR JANUARY 5, 2024, JURISDICTIONAL HEARING**

The Defendant, New Hampshire Secretary of State David M. Scanlan (the “Secretary of State”), through his counsel, the New Hampshire Office of the Attorney General, submits the following proposed findings of fact and rulings of law pursuant to the Court’s December 26, 2023, Order (Document 48).

Proposed Findings of Fact

1. The Plaintiffs did not allege or demonstrate that the Secretary of State deprived or will deprive any plaintiff of the right to vote in any New Hampshire election.

Proposed Rulings of Law

2. The Plaintiffs’ claims are each based on the Plaintiffs’ underlying assertion that the Secretary of State violated state election laws governing the period for voters to change their political party affiliation.

3. The Eleventh Amendment prohibits this Court from exercising subject matter jurisdiction over the Plaintiffs’ claims against Defendant Secretary of State Scanlan.

4. The Plaintiffs do not have a private right of action to enforce alleged violations of Article II, Section 1 of the United States Constitution.
5. The Plaintiffs lack standing to maintain Count 1 in their complaint. See ECF 32-1, at 15-17.
6. The Plaintiffs do not have a private right of action to enforce alleged violations of 52 U.S.C. §10101.
7. The Plaintiffs lack standing to maintain Count 2 in their complaint. See ECF 32-1, at 17-18.
8. Allegations that state election officials violated state election laws by counting unlawful or invalid ballots does not constitute a cognizable “vote dilution” claim under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
9. The Plaintiffs lack standing to maintain Count 3 in their complaint. See ECF 32-1, at 18-19.
10. Allegations that state election officials violated state election laws by counting unlawful or invalid ballots does not constitute a cognizable “vote dilution” claim under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
11. The Plaintiffs lack standing to maintain Count 4 in their complaint. See ECF 32-1, at 19-21.

Respectfully submitted,

David M. Scanlan,
New Hampshire Secretary of State

By his attorney,

THE OFFICE OF THE ATTORNEY GENERAL

Dated: January 3, 2024

/s/ Brendan A. O'Donnell
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by ECF on January 3, 2024, to all parties of record. I hereby certify that a copy of the foregoing was sent by e-mail to all parties of record who are not registered ECF filers.

/s/ Brendan A. O'Donnell
Brendan A. O'Donnell